

IN SENATE OF THE UNITED STATES.

MARCH 7, 1837.

Mr. GRUNDY made the following report, which was read, and ordered to be printed.

The Committee on the Judiciary, to whom were referred the credentials of the honorable Ambrose H. Sevier, have had the same under consideration, and submit the following

REPORT:

At the last session of Congress, the State of Arkansas was admitted into the Union, and the Legislature of that State, in the month of October, 1836, elected Ambrose H. Sevier and William S. Fulton Senators to represent the State in the Senate of the United States. It also appears that, upon the allotment of the said Arkansas Senators to their respective classes, as required by the third section of the first article of the constitution, the said Ambrose H. Sevier was placed in the class of Senators whose term of service expired on the 3d day of March, 1837, and that the Legislature of Arkansas have had no opportunity of filling the vacancy, not having been in session since the fact that the vacancy would occur could have been known in that State. The Governor of the State of Arkansas, on the 17th day of January last, commissioned the said Sevier, as Senator, to fill the vacancy which would take place on the 3d of March. Upon this state of the case, the question is presented whether the said Ambrose H. Sevier is entitled to his seat under the appointment made by the Executive of the State of Arkansas? In looking into the practice of the Senate upon the subject of Executive appointments; no case like the present has been found. Several cases have occurred in which the Executives of different States, in anticipation of the expiration of the regular term of service, have appointed Senators, (the Legislatures not being in session,) and in all of these cases, the Senators thus appointed were admitted to their seats; until the called session of the Senate in March, 1825, when Mr. Lanman, of Connecticut, whose term of service expired on the 3d of March, 1825, produced his credentials from the Governor of Connecticut, and the Senate decided he was not entitled to his seat by a vote of 23 to 18.

This decision seems to have been generally acquiesced in since that time; nor is it intended by the committee to call its correctness in question. The principle asserted in that case is, that the Legislature of a State, by making elections themselves, shall provide for all vacancies which must occur at stated and known periods; and that the expiration

of a regular term of service is not such a contingency as is embraced in the second section of the first article of the constitution.

The case now under consideration is wholly different in principle. The time when Mr. Sevier was to go out of office, under his election made by the Legislature of Arkansas, was decided by lot, agreeably to the provisions of the constitution on that subject. After the decision thus made, the Legislature of Arkansas, not being in session, could not supply the vacancy; and the case, in the opinion of the committee, comes fairly within the provision of the constitution contained in the third section of the 1st article, which declares, "and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies."

The committee are of opinion that Mr. Sevier is entitled to his seat, under the Executive appointment of the 17th of January, 1837, and therefore submit the following resolution:

Resolved, That the honorable Ambrose H. Sevier, appointed a Senator by the Governor of the State of Arkansas, have the oath required by the constitution administered to him.